IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.R. SINGHARAVELU

Writ Petitions No.23479 of 2006, 12706 and 12707 of 2007

W.P.No.23479 of 2006:

S.Srinivasan ... Petitioner

Vs.

1.Union of India,
rep.by the Government of Union Territory of Pondicherry,
through the Secretary to Government,
Law Department,
Pondicherry.

2.The Deputy Secretary (Law),
Government of Pondicherry,
Pondicherry.

3.The Principal,
Dr.Ambedkar Government Law College,
Pondicherry.

4.The Secretary,
Union Public Service Commission,
Dolphur House,
New Delhi.
5.The Registrar,
Central Administrative Tribunal,
Chennai. ... Respondents

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W.P.No.12706 of 2007:

The Union Public Service Commission,
rep.by its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi. ... Petitioner

Vs.

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1.S.Srinivasan
2.Union of India,
rep.by the Government of Union Territory
of Pondicherry,
through Secretary to Government,
Law Department,
Pondicherry.

3.The Deputy Secretary (Law)
Government of Pondicherry,
Pondicherry.

4.The Principal,
Dr.Ambedkar Law College,
Pondicherry.

5.Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai. ... Respondents

W.P.No.12707 of 2007:

The Union Public Service Commission,
rep.by its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi. ... Petitioner

Vs.

1.D.Sankar

2.Union of India,
rep.by the Government of Union of Territory
of Pondicherry,
through Secretary to Government,
Department of Law,
Pondicherry.

3.Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai. ... Respondents

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W.P.No.23479 of 2006 has been filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 29.6.2006 in O.A. No.290 of 2005 on the file of the Central Administrative Tribunal, Chennai Bench, Chennai and quash the same and consequently direct the respondents to regularize the services of the petitioner in the post of Lecturer in Law in Dr. Ambedkar Government Law College, Pondicherry.

W.P. Nos.12706 and 12707 of 2007 have been filed under Article 226 of the Constitution of India to issue a writ of certiorari, to call for the entire records leading to the issue of the final orders in O.A. Nos.290 and 841 of 2005 dated 29.6.2006 on the file of the Central Administrative Tribunal, Chennai Bench, Chennai and quash the same.

* * *

For Petitioners in W.P.Nos.12706 & 12707 of 2007, who is R4 in WP.23479/2006	:	Mr.K.Sridhar, S.C.G.S.C.
For petitioner in WP.23479/2006, who is R1 in WP.12706/2007 and for R.1 in WP.12707 of 2007	:	Mr.Vijay Narayan, Senior Counsel for Mr.G.R. Swaminathan and Mr.Karthick
For R.1 to R.3 in WP.23479/2006, For R.2 to R.4 in WP.12706/2007 & for R.2 in W.P.12707/2007	:	Mr.T. Murugesan, Senior Counsel and Govt. Pleader (Pondicherry)

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COMMON ORDER

ELIPE DHARMA RAO, J.

W.P.Nos.12706 and 12707 of 2007 have been filed by the Secretary of the Union Public Service Commission, seeking to issue a writ of certiorari, to quash the final order dated 29.6.2006

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passed in O.A. Nos.290 and 841 of 2005 on the file of the Central Administrative Tribunal, Chennai Bench, Chennai and W.P. No.23479 of 2006 has been filed by the first respondent in W.P.No.12706 of 2007 seeking to issue a Writ of Certiorarified Mandamus, to quash the impugned order dated 29.6.2006 passed in O.A. No.290 of 2005 on the file of the Central Administrative Tribunal, Chennai Bench, Chennai and consequently direct the respondents to regularize the services of the petitioner in the post of Lecturer in Law in Dr. Ambedkar Government Law College, Pondicherry.

2. The parties are referred to as per their ranking in O.A. Nos.290 and 841 of 2005.

3. The applicant in O.A. No.290 of 2005 was appointed on ad hoc basis for the post of Lecturer in Law as per the Recruitment Rules, 1988. Subsequently, the Recruitment Rules were amended and the condition of clearing the eligibility test for Lecturership conducted by the UGC was incorporated in 1995. As the said applicant did not get the opportunity to get recruited directly, he filed O.A. No.741 of 2000.

4. The applicant in O.A. No.841 of 2005 was appointed as a Lecturer on consolidated basis vide order dated 1.12.1989 as per the Recruitment Rules, 1988 and was serving as any other regularly appointed full time Lecturer. As he had also acquired Ph.D. degree in the year 2000, he was exempted from NET qualification incorporated in the revised Recruitment Rules. He filed O.A.No.865 of 1991 seeking continuity of service, which ended in getting pay on par with regular Lecturer and also continuity of service till regular selection was made by the UPSC. When the Government initiated action for regular selection in 1999, he was left out and hence he filed O.A. No.740 of 2000.

5. The Tribunal, by its common order dated 3.10.2001 in O.A. Nos.740 and 741 of 2000, directed the Government to relax the condition of age and qualification as a one time measure. Thereafter, the applicants participated in the personal talk held by the Selection Committee of the UPSC. They thought that the personal talk was meant for regularisation, but their services were not being regularised as they were not found suitable for the post of Lecturer by the UPSC. Hence the applicants filed O.A. Nos.290 and 841 of 2005 before the Central Administrative Tribunal, Madras Bench.

6. The respondents 1 to 3 filed a common reply, stating that even though the applicants were initially appointed as Part Time Lecturers based on the old Recruitment Rules, as per the direction of the Tribunal in O.A. Nos.740 and 741 of 2000, their services were continued till regular selection was made by the UPSC.

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Simultaneously, action was taken to fill up the vacant post on a regular basis. As per the directions of the Tribunal in O.A. Nos.740 and 741 of 2000, the case of the applicants was considered for regularisation, by relaxing some of the conditions pertaining to age and qualification as a one time measure and steps were taken to regularise the services of the Lecturers by taking up the matter with the UPSC and by giving necessary relaxation. The Selection Committee, based on the available ACRs, bio data and the personal talk, held that the applicants were not found suitable for regularisation as Lecturers. The applicants having participated in the Selection Committee meeting without raising any objection and after giving a willingness letter to participate in the Selection Committee meeting, they cannot now question the selection process and the authority of the Selection Committee to decide since they were unsuccessful in the personal talk.

7. The Central Administrative Tribunal, by an order dated 29.6.2006, disposed of both the O.As. with a direction to the respondents to give the applicants one more chance for personal talk/interview after giving them adequate notice, not less than two weeks time for such a notice and also directed that the said exercise must be completed within a period of three months from the date of receipt of copy of the said order. As against the said order, the Union Public Service Commission filed W.P. Nos.12706 and 12707 of 2007 for the relief stated supra and the applicant in O.A. No.290 of 2005 filed W.P. No.23479 of 2006 for the relief stated supra.

8. The core argument advanced on the part of the Union Public Service Commission and the Union Territory of Pondicherry is that the very appointment of the applicants being adhoc, they cannot seek for regularisation. In support of their arguments, the learned counsel appearing for the Union Public Service Commission and the learned senior counsel appearing for the Union Territory of Pondicherry relied on the Constitutional Bench judgment of the Honourable Apex Court in the case of SECRETARY, STATE OF KARNATAKA AND OTHERS v. UMADEVI AND OTHERS [(2006) 4 SCC 1]. The learned senior counsel for the Union Territory of Pondicherry would also rely on the judgment of the Honourable Apex Court in SURINDER PRASAD TIWARI v. U.P. RAJYA KRISHI UTPADAN MANDI PARISHAD [(2006) 7 SCC 684]. In both these judgments, the Honourable Supreme Court has observed that 'where appointments were made without following the procedure laid down under Articles 14, 16 and 309 of the Constitution, they cannot be directed to be regularised in service.'

9. On the contrary, the learned senior counsel appearing for the applicants would argue that since the applicants were serving the Law College for decades together, denying their regularisation

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is not acceptable and the Tribunal should have straight away ordered their regularisation instead of directing the respondents to grant one more opportunity to the applicants to participate in the interview. In support of his arguments, the learned senior counsel for the applicants would rely on the decisions of the Honourable Apex Court in (1) BHAGWATI PRASAD v. DELHI STATE MINERAL DEVELOPMENT CORPORATION [AIR 1990 S.C. 371] and (2) DR.A.K.JAIN & OTHERS. ETC. v. UNION OF INDIA & OTHERS. [1988 SCR (1) 335:1987 SCC SUPL.497:JT 1987(4) 445:1987 SCALE (2) 1002]. The learned senior counsel for the applicants would also produce a copy of the judgment of the Honourable Apex Court in U.P.STATE ELECTRICITY BOARD vs. POORAN CHANDRA PANDEY AND OTHERS, dated 9.10.2007 in Appeal (Civil) 3765 of 2001, which is subsequently reported in 2007 (7) SUPREME 374.

10. From the materials placed on record, we are able to find that when five vacancies of Lecturer posts arose in the Government Law College, Pondicherry in the year 1988, since there was a ban on creation of posts as well as the filling up of the vacancies and further since the Union Public Service Commission, which is the competent body to make regular appointments, would be able to do so only after a considerable time and delay, in order to tide over the situation, steps were taken to fill up the vacancies through the Employment Exchange. Accordingly, from out of the list sent by the local Employment Exchange, a local Recruitment Committee interviewed and selected Dr.Sankar, who joined the services of the College on 1.12.1989 and Mr.S.Srinivasan joined on 6.12.1991. It is also seen that artificial breaks were given to similarly selected candidates. Thus, the applicants are serving as Lecturers on adhoc/temporary basis in Dr.Ambedkar Law College, Pondicherry having been appointed between 1989 and 1991 i.e. well before 10.4.1995 from which date onwards the Recruitment Rules were amended. Prior to the coming into force of the Recruitment Rules of the year 1995, the educational qualification required for direct recruitment to the post of Lecturer was I or II Class Master's degree in Law from a recognized University or equivalent. Thereupon, as per the Recruitment Rules of the year 1995, the qualification was changed to a Master's Degree in the concerned subject from a recognized University, who have cleared the eligibility test for lecturership conducted by the UGC or a similar test accredited by the UGC, not exceeding 35 years of age.

11. When Dr.Sankar and others were terminated from service on ground that they are only part-time lecturers, they have approached the Tribunal in O.A.Nos.446 of 1991, 461 of 1991 and 865 of 1991 and the Tribunal, by its common order dated 13.7.1993, has allowed all the said Original Applications, directing their reinstatement, further directing that their pay shall be fixed on par with that of regular lecturers, having regard to their length

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of service from the date of their initial appointment by ignoring the break in service. This order of the Tribunal has become final resulting in the issuance of G.O.Rt.No.8133, dated 17.11.1993.

12. It is also seen from the materials placed on record that when a similarly situated Lecturer by name Mr.V.Krishan Kumar, filed O.A.No.462 of 1986 before the Tribunal seeking regularization of his services, taking into consideration the fact that he was serving in the Government Law College, Pondicherry for a long period, the Tribunal has turned down his plea by its order dated 23.4.1987, resulting in the said Lecturer approaching the Honourable Supreme Court in Civil Appeal No.781 of 1988 and the Honourable Supreme Court, by its order dated 8.9.1994 has allowed the said appeal with the following observations:

> "Keeping in view the fact that the appellant is continuing to serve as a Lecturer in Law College, Pondicherry for almost two decades, it would be travesty of justice to hold that he is not entitled to be regularised in the said post. We are of the view that it would be in the interest of justice to direct the respondents to treat the appellant as a regular substantive lecturer in the service of the Pondicherry Administration. We order accordingly. We make it clear that we are regularising the services of the appellant, keeping in view the special facts and circumstances of the case specially the long period of service rendered by the appellant. We allow the appeal, set aside the order of the Tribunal and direct the respondents to regularise the appellant as a lecturer in Government Law College, Pondicherry."

13. There is no dispute with regard to the fact that the applicants were appointed in regular vacancies between 1989 and 1991, through Employment Exchange, since there was urgent need to fill up the vacancies and they are continuing in their services all these years, either with or without artificial breaks. It has also been seen that they were selected by a local Selection Committee. When such a procedure was admissible under the old Recruitment Rules, which were in vogue at the time of their appointment, it cannot be said that they were recruited by resorting to back door methods, so as to deny their regularisation. It is to be pointed out that the selection itself has been done by the organs of the Government of Pondicherry and not by any private management of any educational institution, at the cost of the regular selection process. The age and educational qualification of the applicants was held to be perfectly fit for the post by the respondents at the time of their selection under the old Recruitment Rules. Admittedly, the new

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Recruitment Rules came into force much later the selection of the applicants, i.e. w.e.f. 10.4.1995 only. Therefore, we wonder as to how such new Recruitment Rules could be pitted against the candidates like the applicants who were selected by the procedure contemplated under the old Recruitment Rules. At the cost of repetition, we are unable to accept the contention raised on the part of the UPSC and the Government of Pondicherry that the appointments of the applicants is a back door method.

14. No doubt, the Honourable Apex Court in its Constitutional Bench judgment in Umadevi's case (cited supra), which was followed in Surinder Prasad Tiwari's case (also cited supra), has held that the employees, who were appointed without following the procedure, cannot be directed to be regularised in service. But, as has already been held supra, the applicants were appointed following the procedure contemplated and the method permitted by the old Recruitment Rules, which were in vogue at the time of their selection.

15. Further more, in U.P.STATE ELECTRICITY BOARD vs. POORAN CHANDRA PANDEY AND OTHERS [2007 (7) SUPREME 374], where 34 petitioners who were daily wage employees of the Cooperative Electric Supply Society had prayed for regularization of their services in the U.P.State Electricity Board, Their Lordships of the Honourable Apex Court, while referring to various pronouncements made by the Apex Court earlier, have held:

> "The decision in Uma Devi's case [(2006) 4 SCC 1], cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and often Uma Devi's case is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. The ratio of any decision must be understood in the background of the facts of that case. A case is only an authority for what it actually decides, and not what logically follows from it. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

It has also been held in para No.18 of the Judgment:

> "We may further point out that a seven-Judge Bench decision of this Court in MANEKA GANDHI vs. UNION OF INDIA AND ANOTHER [AIR 1978 SC 597] has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. Maneka Gandhi's case (supra) is a decision of a seven-Judge Bench, whereas Uma Devi's case (supra) is a decision of a five-Judge Bench of this Court. It is

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well settled that a smaller bench decision cannot override a larger bench decision of the Court. No doubt, Maneka Gandhi's case (supra) does not specifically deal with the question of regularization of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face."

16. In view of such a categorical observation made by the Honourable Apex Court, which is aptly applicable to the case on hand and further since in the case on hand also, the petitioners are working for the last 25 years or so without any benefit when compared to other similarly situated persons, the prayer of the applicants to regularize their services deserves to be allowed.

17. As has already been seen supra, even on an earlier occasion, the Tribunal in O.A.No.741 of 2001, has directed the respondents to regularize the services of Mr.S.Srinivasan, the petitioner in W.P.No.23479 of 2006, having found him eligible to seek for regularization. The said order of the Tribunal seems to have become final. However, the respondents, in spite of getting extension of time many times, did not comply with the direction of the Tribunal, forcing him again to approach the Tribunal.

18. The Tribunal should have considered all these aspects and should have ordered the respondents to regularise the services of the applicants, who are rendering their services for decades together, also considering the fact that by this time, they should have been over-aged to pursue any other job to eke out their livelihood. Therefore, the order of the Tribunal needs to be modified since it has not taken into consideration the above facts and thus has landed in an erroneous conclusion.

19. Accordingly, the order of the Tribunal is modified and the respondents are directed to regularise the services of the applicants within a period of eight weeks from the date of receipt of a copy of this order.

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With this direction, W.P.No.23479 of 2006 stands allowed and W.P.Nos.12706 and 12707 of 2007 stand dismissed. No costs. Connected Miscellaneous Petitions shall stand closed.

ssa/Rao

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Secretary to the
Government of Union Territory of Pondicherry,
Law Department,
Pondicherry.

2.The Deputy Secretary (Law),
Government of Pondicherry,
Pondicherry.

3.The Principal,
Dr.Ambedkar Government Law College,
Pondicherry.

4.The Secretary,
Union Public Service Commission,
Dolphur House,
New Delhi.

5.The Registrar,
Central Administrative Tribunal,
Chennai.

- 3 ccs to mr. K. Sridhar, Advocate SR No. 74863
- 1 cc to M/s. G. R. Swaminathan, Advocate SR No. 75478
- 1 cc to Mr. Karthik Muukundan & Neelakantan, SR No. 75628
- 3 ccs to Government Pleader, Pondy, SR No. 74870, 74874, 74875

KS(CO)
SR/5.1.2008

Common Order in W.P.Nos.23479 of 2006, 12706 & 12707/2007

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